

## MEMO

March 18, 2020

To: Jim Lampke, Esq. Executive Director/Secretary-Treasurer

From: Atty. John M. (Jack) Collins, Martha's Vineyard – [jackmcpa@aol.com](mailto:jackmcpa@aol.com) 508-523-9731

Re: Forcing an Employee that MAY have the Coronavirus to leave work

As requested, this Memo is designed to answer two of the questions that the panel of labor lawyers have been asked to address later today. You wanted this detailed explanation to post on the Association's web site. The questions are:

- **Has anyone encountered an employee who is coughing and has been told by fellow employees to go home but refused? A superior has apparently not told him to go home.**
- **If forced to go home, can he be charged with his own sick time? Can we require a doctor's release to return to work before allowing him to return?**

Employers should use common sense and not jump to any conclusions that a person has Coronavirus simply because they are coughing. When co-workers unsuccessfully ask someone to leave work and the person refuses, the supervisor (Department Head, Chief, Town Manager, etc.) should learn what has prompted this request. That might involve meeting with and informing co-workers of the symptoms of Coronavirus and explaining that simply coughing is not sufficient to make such a diagnosis. If the co-workers claim that there are more symptoms and it seems reasonable to suspect Coronavirus, the supervisor, after consultation with HR and labor counsel, should – along with a management witness (such as HR Director) - meet with the “sick” employee and have a frank but compassionate discussion about whether they are feeling well enough to work. If they are not, they can be sent home on sick leave. If they claim to be able to do the job, and do not ask for any accommodations, the supervisor may attempt to determine if the individual exhibits multiple symptoms of the Coronavirus (based on CDC and other agencies' guidance). Without such symptoms, or evidence they were exposed to someone with the virus, the employee should not be “ordered” to leave work.

If the employee exhibits multiple symptoms of the virus or has been exposed to someone with the virus, they should be ordered to stay home for up to 14 days. If they show clear signs of the virus, they can be charged to their sick leave accrual. Whether persons that are not sick themselves can have their time charged to accrued sick leave is not clear. Persons sent home against their wishes should be encouraged to use any available sick leave. However, if they refuse, it is probably easier to place them on paid administrative leave rather than force them to use sick leave and face an appeal process. They may be required to be examined by a physician selected and paid for by the municipal employer, or they may be allowed to produce a fitness for duty note from their own doctor. Arrangements for testing may depend on test-kit availability and protocols that are at present not always clear.

It is advisable to assure the employee that their identity will remain confidential. Employers should ask the employee to identify any individuals with whom they came into contact within the last 14 days. It is recommended that employers ask the employee to identify all areas in the office where they were physically present in the last 14 days.

A municipal employer should take several actions where an employee has tested positive for the Coronavirus. They should contact the CDC and local health department immediately. They should also arrange for a hazmat company to clean and disinfect the workplace. They should also let other employees know of potential signs and symptoms and offer to allow them to be tested. If the federal government's plan to provide free testing has not materialized at that time or the employee's health insurance will not cover the cost, the employer should offer to pay for such testing.